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8 **UNITED STATES BANKRUPTCY COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 In re:

12 PHAGE BIOTECHNOLOGY CORP.,
13 a Delaware corporation,

14 Debtor and
15 Debtor-in-Possession.

Case No. 08-09859-LA11

Chapter 11 Proceeding

**DEBTOR'S MOTION FOR ORDER
(1) APPROVING OVERBID PROCEDURES
AND BREAK-UP FEE IN CONNECTION
WITH PROPOSED SALE OF
SUBSTANTIALLY ALL ASSETS OF THE
ESTATE, AND (2) SETTING HEARING ON
MOTION FOR SALE OF SUBSTANTIALLY
ALL ASSETS OF ESTATE; MEMORANDUM
OF POINTS AND AUTHORITIES; AND
DECLARATION OF DR. THOMAS J.
STEGMANN IN SUPPORT THEREOF**

[Local Bankruptcy Rule 6004-1]

DATE: February __, 2010
TIME: _____.M.
PLACE: Department 2, Room 118
325 West F Street
San Diego, CA 92101

1 **TO THE HONORABLE LOUISE DECARL ADLER, UNITED STATES**
 2 **BANKRUPTCY JUDGE; THE OFFICE OF THE UNITED STATES TRUSTEE;**
 3 **CREDITORS; AND PARTIES-IN-INTEREST:**

4 **PLEASE TAKE NOTICE** that, pursuant to Local Bankruptcy Rule 6004-1, Phage
 5 Biotechnology Corporation, the debtor and debtor-in-possession herein (the “Debtor”), hereby
 6 moves for an order approving overbid procedures and break-up fee (the “Procedures Motion”),
 7 and setting a hearing on a motion for approval of the sale of substantially all assets of the Debtor’s
 8 estate (collectively, the “Assets”) pursuant to sections 363 and 365 of the Bankruptcy Code (the
 9 “Sale Motion”). Debtor proposes to sell the Assets to New Technologies Holding Pte. Ltd., a
 10 limited private company organized under the laws of the Republic of Singapore (“New
 11 Technologies”) and/or one or more entities established by New Technologies for the purpose of
 12 purchasing the Assets (collectively, the “Buyer”), pursuant to the following: (i) \$2,000,000 in the
 13 form of a reduction and satisfaction of an equivalent amount of the various debtor in possession
 14 financing obligations Debtor has to Buyer (any and all such loans and debts outstanding at any
 15 time, including principal, accrued interest and fees, hereinafter referred to as the “DIP Loan”);
 16 (ii) the assumption of the DIP Loan in excess of \$2,000,000 (and, in the event Buyer, subject to
 17 further agreement(s) with Debtor and subject to Court approval, is requested to and elects to
 18 provide additional financing to Debtor, such additional financing (the “Overadvance”); provided,
 19 however, in the absence of any Overadvance and to the extent the DIP Loan at Closing is less
 20 than \$2,500,000, Buyer shall pay to Debtor in cash the difference between the DIP Loan and
 21 \$2,500,000; and (iii) shares of the Common Stock of Buyer constituting ten (10%) percent of the
 22 fully-diluted post-Closing equity of Buyer (the “Equity Shares”); provided, however, that (a) to
 23 the extent the DIP Loan exceeds \$2,500,000 and/or (b) if any Overadvance exists, the Equity
 24 Shares shall be reduced by ten (10%) percent for each \$20,000 increment of the aggregate total
 25 amount that the DIP Loan and, if applicable, the Overadvance exceed \$2,500,000.

26 In order to maximize value in this case, Debtor seeks to auction the Assets. In order to
 27 ensure a fair and efficient auction, Debtor seeks to establish uniform overbid procedures with
 28 which all interested parties must comply in order to purchase Debtor’s Assets.

1 This Procedures Motion is based upon the Memorandum of Points and Authorities set
2 forth herein below, the declaration of Dr. Thomas J. Stegmann ("Stegmann Declaration")
3 appended hereto, all pleadings, papers and records on file with the Court, and such other evidence,
4 oral or documentary, as may be presented to the Court at the hearing on the Procedures Motion.

5 WHEREFORE, Debtor prays that the Court enter an order approving the proposed overbid
6 procedures and break-up fee, and setting a hearing on the Sale Motion, and such additional relief
7 as the Court deems just and proper.

8 DATED: February 22, 2010

WINTHROP COUCHOT
PROFESSIONAL CORPORATION

9
10 By: /s/ Marc J. Winthrop
11 Marc J. Winthrop
12 Samir D. Parikh
13 General Insolvency Counsel for Debtor and
14 Debtor-in-Possession
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 From the outset of this case, the ability of Phage Biotechnology Corporation, the debtor
5 and debtor-in-possession herein ("Debtor"), to reorganize its financial affairs in Chapter 11 has
6 been dependent upon, among other things, access to cash to enable Debtor to pursue U.S. Food
7 and Drug Administration ("FDA") approval of its bio-generic and proprietary drug portfolio.
8 Unfortunately, Debtor has been unable to obtain the requisite amount of financing it believes is
9 necessary to pursue its business strategy. Moreover, Debtor's ability to generate profits is
10 hampered by the significant administrative costs associated with the bankruptcy and the
11 negative effect on sales resulting from the stigma associated with operating as a debtor-in-
12 possession.

13 Fortunately, through Debtor's pre-petition and post-petition marketing efforts, Debtor
14 has identified a strategic buyer who has proposed to purchase substantially all its assets
15 ("Assets") for an amount greater than liquidation value, which would maximize the return to
16 creditors. Based on Debtor's current financial condition, the weak economy, and the lack of
17 offers received for the Assets, Debtor believes that a prompt sale of Debtor's Assets is necessary
18 to maximize value and recovery to creditors. Debtor has been seeking a buyer or financial
19 partner since October 2008. A list of all contacts/companies that were contacted appears as
20 Exhibit A to the Declaration of Dr. Thomas J. Stegmann, filed herewith.

21 While the specific amount of the proposed bid submitted by Buyer cannot be precisely
22 determined at this time (though estimated to be not less than \$2,700,000), based on the structure
23 of the proposal, the proposed bid clearly provides substantially more value than would be
24 realized in a liquidation sale. In order to preserve the bid and value for the estate, the Sale
25 Motion should be heard as soon as possible. Moreover, Debtor's cash resources and DIP Loan
26 availability will likely be substantially exhausted by March 30, 2010.

27 Debtor hereby submits that court-approved uniform sale and bidding procedures and
28 guidelines, which can be described more fully in the Sale Motion, will lead to an orderly sale at

1 the hearing thereon. In this regard, Debtor respectfully submits that it is necessary to obtain a
2 Court order approving the proposed overbid procedures and break-up fee as soon as possible to
3 include in the court-approved sale and overbid procedures in the Sale Motion.

4 **II.**

5 **GENERAL BACKGROUND FACTS**

6 A summary of the background of Debtor, including a description of Debtor's operations
7 and financial difficulties which ultimately led to Debtor's Chapter 11 filing, follows
8 immediately hereinbelow.

9 **A. General Background.**

10 Debtor is in the business of developing and commercializing an efficient method of
11 manufacturing bio-pharmaceuticals with its proprietary technology. On October 2, 2008, certain
12 creditors commenced an involuntary Chapter 7 case against Debtor (the "Petition Date"). On
13 October 28, 2008, the Court entered an order for relief converting this case into a voluntary
14 Chapter 11 case.

15 Debtor is a Delaware corporation with its corporate office and operating facilities located
16 in San Diego, California. Debtor currently employs 11 people, including part time employees
17 and consultants of various kinds. From Debtor's inception until October 7, 2008, Debtor's
18 Chairman, President, and CEO was Daniel Montano ("Montano"). Mr. Montano resigned from
19 all positions with Debtor on or about October 7, 2008. Debtor's current CEO is Dr. Thomas J.
20 Stegmann.

21 **B. Debtor's Business.**

22 Debtor was founded in 1998 to commercialize an efficient method of manufacturing bio-
23 pharmaceuticals that were invented by a group of Ukrainian scientists. As a development stage
24 company which is still not generating significant revenue, Debtor depends significantly on
25 external funding for survival and progress. A majority of the external funding provided to
26 Debtor prior to the Petition Date came from the holders (the "Noteholders") of Debtor's
27 promissory notes (the "Notes"). Debtor's promissory notes were issued at various dates from
28 2001 through to 2004 with a three-year maturity date. Debtor raised a total of approximately

1 \$16,700,000 in the period from 2001 to 2005 from two series of convertible promissory notes.
2 Series I totaled approximately \$11,600,000 principal with 233 Noteholders and Series II totaled
3 approximately \$5,100,000 of principal with 20 Noteholders. The principal and accrued interest
4 of these Notes now total approximately \$23,500,000, or approximately 75% of Debtor's total
5 debt. The corporate books of record of Debtor are unaudited.

6 Debtor has a contractual relationship with Phage Biotech Ukraine LLC, located in Kiev,
7 Ukraine ("Phage Ukraine"), which employs a research team and supports the San Diego
8 manufacturing facility. Substantially all of Debtor's original intellectual property was sourced
9 from Phage Ukraine.

10 Debtor's intellectual property includes numerous U.S. patents and related foreign patent
11 approvals in European countries with large markets for Debtor's drugs. In Japan, three of
12 Debtor's U.S. Patents are currently being examined.

13 Debtor's main route to commercialization and profitability has always been to seek
14 further revenue generating activities for its licensed San Diego manufacturing facility, and to
15 gain FDA approval for its bio-generic and proprietary drug portfolio to be manufactured by the
16 Phage process. At present two compounds are in FDA clinical trials: Phage's Human Growth
17 Hormone ("HGH"), and Phage's Fibroblast Growth Factor 1 ("FGF-1").

18 **C. Events Precipitating This Chapter 11 Filing.**

19 Debtor's financial problems and the consequent need to file this bankruptcy proceeding
20 were primarily caused by a variety of factors. As a start-up company, Debtor has minimal
21 income and thus needs infusions of outside capital in order to fund its operations of developing
22 and commercializing its intellectual property. From 1998 to 2008, Debtor raised net capital
23 proceeds of approximately \$24,500,000 from common and preferred stock, and note and loan
24 financing. However, from late summer 2005 until summer of 2008, Debtor only raised net
25 proceeds of approximately \$6,000,000 of outside capital which was grossly inadequate in
26 relation to Debtor's needs, maturing Note obligations, and the scale of its opportunity. This
27 failure to raise sufficient capital in the last several years led to Debtor defaulting on its Note
28 obligations, as well as obligations to other creditors.

1 **D. Disclosure Regarding Buyer**

2 New Technologies Holding Pte. Ltd. ("Buyer") is a limited private company organized
3 under the laws of the Republic of Singapore. Messrs. Frederic Chanson and Richard Ritter, who
4 currently sit on Debtor's Board of Directors and are participants in the DIP Loan, are associated
5 with Buyer.

6 **E. Marketing Efforts**

7 Debtor has been actively marketing itself for investment or sale since October 2008.
8 Since the filing, Debtor has redoubled its efforts and has been actively seeking an investor to
9 infuse capital into Debtor to file a plan of reorganization. Debtor has been in regular contact
10 with the creditors' committee to report on the status of these efforts, which, to date, have yielded
11 no results.

12 **F. U.S. Trustee's Motion to Dismiss or Convert**

13 On December 10, 2009, the United States Trustee ("UST") filed a Motion to Dismiss or
14 Convert the Case to One Under Chapter 7 (the "Motion to Dismiss"). The Motion to Dismiss
15 was originally scheduled to be heard on January 14, 2010. On December 23, 2010, this Court
16 entered an Order approving a stipulation between the UST and the Debtor that continued the
17 hearing to March 4, 2010. On February 18, 2010, the Debtor filed the Debtor's Opposition to
18 United States Trustee's Motion to Dismiss or Convert the Case to One Under Chapter 7, in
19 which the Debtor explained that, subsequent to the filing of the Motion to Dismiss, the Debtor
20 received the term sheet from the Buyer to purchase the Assets.

21 **III.**

22 **THE PROPOSED SALE OF THE ASSETS OF DEBTOR**

23 Debtor believes that a very prompt sale of its Assets will maximize value for Debtor's
24 estate case. The alternative to an orderly sale will, under the circumstances, and given the near-
25 term exhaustion of all available liquidity, result in a liquidation. The following is a summary of
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the general terms that are embodied in the Asset Purchase Agreement (the "Agreement")¹ tendered by Buyer.

A. Assets to be Purchase and Liabilities to be Assumed

Debtor shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase, acquire, take assignment of, and accept, free and clear of any and all Liens, any and all of Debtor's rights, title and interests in, to and under the Assets of Debtor in existence on the date hereof and any additions thereto on or before the date of the consummation of the transaction proposed herein (which is expect to occur on or about March 30, 2010) (the "Closing Date") related to the business conducted by Debtor as of the date hereof, which business includes commercializing efficient methods of development and manufacturing of bio-pharmaceuticals and protein pharmaceuticals for human use in two classes (i) "bio-similar" versions of marketed drugs whose patents have expired and (ii) new drug candidates developed by Debtor that will undergo clinical trials, including longer-acting PEGylated versions of marketed protein products (the "Business"), whether real, personal, or mixed, whether tangible or intangible, whether accrued, contingent, or otherwise, whether or not carried on the books and records of Debtor, including, but not limited to all of Debtor's right, title and interest in and to the Assets described below:

(i) all intellectual property owned or used by Debtor (including, without limitation, the foreign and domestic patents, patent applications, including any continuations, continuations-in-part, and derivatives related thereto, and trade secrets; trade names, trademarks, all internet websites, domain names, right to the name "Phage Biotechnology", "Phage" and any marks, logos and indicia related thereto, and any permutation, variation or component thereof or other source identifiers, all other owned intellectual property and Debtor's rights in and to the licensed intellectual property), wherever held or registered, including the right to sue and collect damages related thereto for past, present and future infringement of any of the foregoing; provided that such Intellectual Property will remain subject only to the intellectual property license rights;

(ii) certain assigned leases and contracts;

(iii) all supplies, equipment (including, but not limited to, laboratory and operating equipment), computer hardware, telecommunication systems, printers,

¹ A true and correct copy of the Agreement, substantially in the form to be executed by the parties, is attached as Exhibit "1" to the Stegmann Declaration. The Agreement, when executed (contemplated to be prior to the bid procedures hearing) will be filed with the Court when so executed. To the extent there are any discrepancies between this summary and the Agreement, the terms in the Agreement shall govern.

1 servers, machinery, furniture, fixtures, leasehold improvements, and other tangible
2 property owned or used by Debtor related to the Business and (A) located at either 6868
3 Nancy Ridge Drive, San Diego, CA 92121 or 6861 Nancy Ridge Drive, San Diego, CA
4 92121 (collectively, the Assumed Facilities), including any and all assets temporarily
off-site for repair or other purposes or being shipped to Debtor, (B) used by the Assumed
Facilities although located outside the Assumed Facilities;

5 (iv) all trade and other accounts receivable (including, but not limited
6 to, unbilled accounts receivable and accounts receivables due from CardioVascular
BioTherapeutics, Inc. or its subsidiaries or affiliates ("CVBT")) owned by Debtor and
any claim, remedy or other right related to any of the foregoing;

7 (v) all subscription receivables (including, but not limited to,
8 receivables due from GHL Financial Services LTD., Inc. or its affiliates or subsidiaries
9 ("GHL") of the Business and any claim, remedy or other right related to any of the
foregoing;

10 (vi) any rights, claims, counterclaims, credits, causes of action, remedy
11 or other rights related lawsuit against GHL or CVBT;

12 (vii) all of Debtor's rights, claims, counterclaims, credits, causes of
13 action and rights of set-off against third parties related to the Business, or otherwise
14 related to the any Assumed Obligations, Purchased Assets or assigned contracts,
including, without limitation, invention assignment agreements and confidentiality
agreements, in effect on or prior to the Closing Date;

15 (viii) all inventory owned or used by Debtor related to the Business;

16 (ix) permits, business licenses, and other authorizations of
17 governmental authorities and third parties of Debtor that are necessary to (A) the
18 occupation of the Assumed Facilities, or (B) the operation of the Business;

19 (x) any warranties, indemnities and guarantees of third parties on any
Purchased Assets;

20 (xi) any books of account, ledgers, financial, accounting and tax
21 records and all general and personnel records, files, invoices, customers' and suppliers'
22 lists, other distribution and mailing lists, price lists, reports, plans, advertising materials,
23 catalogues, billing records, sales and promotional literature, manuals, and customer and
supplier correspondence of Debtor that pertain to the Purchased Assets or the Business
(collectively, the "Records");

24 (xii) any claims, deposits, security deposits and other security, prepaid
25 expenses and other prepayments, and prepaid assets, notes receivable and other
26 miscellaneous receivables, causes of action, rights of recovery, rights of setoff, and rights
27 of recoupment as of the Closing Date owned or enforceable by Debtor, including, without
28 limitation, (A) accounts receivable from vendors, (B) prepayments and deposits with
respect to freight costs, rent, cooperative advertising, computer and telecommunications
costs, and occupancy costs, and travel advances, (C) claims or rights for refund or return
of taxes, (D) any litigation claims, rights, and causes of action (including without

1 limitation stockholder derivative claims), and (E) the security deposits under the assigned
2 leases totaling approximately US \$165,429.00;

3 (xiii) all rights of Debtor to the telephone numbers used in the Business,
4 including;

5 (xiv) certain lock boxes and other accounts of Debtor necessary for the
6 operation of the Business;

7 (xv) without duplication, any other asset specifically indentified by
8 Buyer;

9 (xvi) all cash generated by the operation of the Business or received by
10 the Business at and after the Closing Date;

11 (xvii) all goodwill associated with the Purchased Assets and the
12 Business; and

13 (xviii) other than the categories of assets enumerated above, all other
14 assets of Debtor of every kind and description, tangible or intangible other than the
15 Excluded Assets.

16 **B. The Terms of the Proposed Sale.**

17 Based on the offer made by Buyer, Debtor proposes to sell its Assets to Buyer. At Closing
18 (as defined below), Buyer will pay to Debtor the purchase price as follows:

19 (i) \$2,000,000 in the form of a reduction and satisfaction of an equivalent
20 amount of the various debtor in possession financing obligations Debtor has to Buyer (any
21 and all such loans and debts outstanding at any time, including principal, accrued interest
22 and fees, hereinafter referred to as the "DIP Loan");

23 (ii) the assumption of the DIP Loan in excess of \$2,000,000 (and, in the event
24 Buyer, subject to further agreement(s) with Debtor and subject to Bankruptcy Court
25 approval, Buyer is requested to and elects to provide additional financing to Debtor, an
26 such additional financing shall be known as the "Overadvance"); provided, however, in the
27 absence of any Overadvance and to the extent the DIP Loan at Closing is less than
28 \$2,500,000, Buyer shall pay to Debtor the difference between the DIP Loan and
\$2,500,000; and

(iii) shares of the Common Stock of Buyer constituting ten (10%) percent of the
fully-diluted post-Closing equity of Buyer (the "Equity Shares"); provided, however, that

(a) to the extent the DIP Loan exceeds \$2,500,000 and/or (b) if any Overadvance exists, the Equity Shares shall be reduced by ten (10%) percent for each \$20,000 increment of the aggregate total amount that the DIP Loan exceeds \$2,500,000 and/or to the extent of any Overadvance (collectively, the "Purchase Price").

Buyer is requiring that this sale shall close no later than March 30, 2010 ("Closing"). At Closing, in the event Buyer has the highest bid, the deliveries constituting the Purchase Price shall be effected and to the extent applicable delivered for deposit into the attorney trust account of Debtor's counsel.

C. Proposed Overbid Procedures.

Buyer has requested and Debtor proposes the following overbid procedures in connection with the proposed sales transaction:

(i) Binding offers to purchase the Assets to be sold under the Agreement ("Qualified Offers") may be submitted up to three (3) days prior to the date a final hearing is scheduled for the approval (the "Final Hearing") of the Agreement and any ancillary documents required in such Agreement. Two (2) business days prior to the Final Hearing, a meeting (the "Offer Evaluation Process") will be held at Winthrop Couchot Professional Corporation, 660 Newport Center Drive, Fourth Floor, Newport Beach, California 92660, the offices of counsel to Debtor, for Debtor to determine in its discretion, after consultation with its Creditors' Committee, that proceeding with the Offer Evaluation Process is appropriate.

(ii) Each Qualified Offer must include (i) a mark up of the Agreement to the extent a Qualified Offer contemplates material changes thereto, (ii) detailed information about the party making the Qualified Offer, including its financial and other capacity to consummate the transaction, (iii) an identification of any executory contracts and leases to be assumed by the party making the Qualified Offer, and (iv) information sufficient to demonstrate that the party making the Qualified Offer will be able to provide parties to such contracts and leases with adequate assurance of its ability to perform under them. Although a Qualified Offer may be subject to some contingencies, any such

1 contingencies shall be considered by Debtor when evaluating and comparing Qualified
2 Offers.

3 (iii) During the Offer Evaluation Process, Debtor shall evaluate the offers of
4 any Qualified Offers submitted during the Offer Evaluation Process, provided that (i) any
5 initial Qualified Offers provide consideration for the Assets that exceeds the
6 consideration offered for such Assets by Buyer plus the Stalking Horse Protections (as
7 defined below in (C)(iv)) (calculated under the assumption that the Stalking Horse
8 Protections will aggregate approximately \$300,000) and (ii) any such initial Qualified
9 Offers provide a minimum cash component equal to the aggregate of (A) the DIP Loan
10 outstanding at Closing and the Overadvance, if any, outstanding at Closing plus (B) the
11 Stalking Horse Protections, plus (C) all administrative and priority expense claims. Any
12 successive Qualified Offers (in the event of an auction or similar process) shall be
13 considered only if they exceed the previous offer by \$50,000. In comparing offers during
14 the Offer Evaluation Process, and to the extent the Stalking Horse Protections are
15 approved by the Court, the parties shall consider that selecting the offer of Buyer would
16 avoid having to pay Buyer the Stalking Horse Protections. Debtor may recess the Offer
17 Evaluation Process from time to time in its discretion in order to assess Qualified Offers
18 or permit participants to alter or increase their Qualified Offers. Debtor may conduct the
19 Offer Evaluation Process as an auction, a series of negotiations or whatever other means
20 it determines to be appropriate in its business judgment.

21 (iv) If the Assets to be sold pursuant to the Agreement are sold other than to
22 Buyer (or an affiliate of Buyer) in accordance with the procedures provided in the Sale
23 Motion, then Buyer shall be paid, out of the cash proceeds of such sale, (i) the sum of
24 \$100,000 (the "Break-Up Fee") and (ii) Buyer's reasonable and necessary out-of-pocket
25 fees and costs, including costs of counsel, in an amount not to exceed \$200,000 (the
26 "Expense Reimbursement", and together with the Break-Up Fee, collectively the
27 "Stalking Horse Protections"). The Stalking Horse Protections shall be entitled to status
28 and payment as a super-priority administrative expense in Debtor's bankruptcy case.

(v) Debtor shall have the sole and absolute discretion, subject to approval of the Court, to determine the relative value of any Qualified Offer(s), to determine whether to accept or reject any Qualified Offer(s), subject to Buyer's entitlement to the Stalking Horse Protections as set forth herein, and to determine which Qualified Offer(s) it deems to be the highest and best offer available. Specifically, in evaluating competing Qualified Offers, Debtor shall not be limited to price as the determinative factor, but may consider other factors, including, without limitation, the financial qualifications of the party or parties submitting the Qualified Offer(s) and the likelihood that the proposed acquisition transaction will close within a timeframe acceptable to Debtor.

(vi) If Buyer's final bid is not the highest bid, upon the closing of a sale of the Assets to another entity, Buyer shall be delivered the Stalking Horse Protection (as well as receive full payment of the DIP Loan and any Overadvance). If Buyer is the successful bidder, then it must tender the consideration constituting its successful bid.

NOTWITHSTANDING THE FOREGOING PROCEDURES, SINCE THE PRECISE AMOUNT OF THE PURCHASE PRICE CANNOT BE DETERMINED AT THIS TIME (though presently calculated, at minimum, in the amount of \$2,700,000), PROSPECTIVE PURCHASERS MAY AND ARE ENCOURAGED TO SUBMIT BIDS FOR PURCHASE OF SUBSTANTIALLY ALL ASSETS OF THE ESTATE UTILIZING THE AGREEMENT AS A TEMPLATE.

Debtor's management believes that establishing uniform procedures for bidding on the Assets will allow Debtor and the Court to promptly review, analyze and compare all bids received to determine which bid is in the best interests of Debtor. Additionally, the proposed overbid procedures are fair and equitable.

D. Stalking Horse Protection Fee.

If the Assets are sold other than to Buyer or one of its affiliates in accordance with the procedures provided herein and in the Sale Motion, then Buyer shall be paid, out of the cash proceeds of such sale the Stalking Horse Protection. The Stalking Horse Protections shall be entitled to status and payment as a super-priority administrative expense in this bankruptcy case,

1 but shall be payable only from the cash proceeds of the sale of the Assets.

2 IV.

3 **GOOD CAUSE EXISTS TO APPROVE THE OVERBID PROCEDURES**

4 As set forth in the Stegmann Declaration, Debtor believes that the overbid procedures set
5 forth above are reasonable. In the context of bankruptcy, sales such as the pending transaction
6 between Debtor and Buyer become even more challenging, due in part to a Debtor's duty to
7 maximize the value of estate assets and the obligation to encourage competitive bidding in order
8 to achieve the highest and best price. It is clear that few potential buyers of the Assets would be
9 willing to enter into a purchase agreement in the context of a bankruptcy proceeding without
10 some assurance that, on the one hand, the "stalking horse" protections are provided to the initial
11 catalytic purchaser, and on the other hand, that the bidding process will be fair and equitable and
12 will treat all parties equally.

13 In this instance, Debtor believes that the proposed overbid procedures are fair and
14 equitable, and treat all parties equally. Moreover, as set forth in the Stegmann Declaration, the
15 amount of the initial overbid in this case is necessary to encourage bidding for the Assets.
16 Moreover, subsequent overbids in increments of \$50,000 equal no more than two percent (2%)
17 of the potential purchase price. Based upon the foregoing, Debtor respectfully requests that the
18 Court approve the overbid procedures outlined above.

19 V.

20 **THE BREAK-UP FEE SHOULD BE APPROVED**

21 Aside from the proposed overbid procedures, Buyer has required a "break-up" fee in the
22 event that an overbid occurs and Buyer is not the ultimate purchaser of the Assets. Specifically,
23 under the terms of the Agreement, in the event that another party is successful in purchasing the
24 Assets, Debtor is required to pay to Buyer the Stalking Horse Protections to compensate Buyer
25 for its costs and expenditures, including lost opportunity costs. Of significant import, under
26 such circumstance, the break-up fee will be paid upon the closing of the sale to the alternative
27 successful bidder and shall be paid from the proceeds of the purchase price tendered by the
28 successful bidder in connection with the Qualifying Competing Proposal.

1 In scrutinizing break-up fees or topping fees, bankruptcy courts typically employ a
 2 dynamic case-by-case approach whereby a court “must take into consideration what is in the
 3 best interests of the estate.” See In re Wilde Horse Enters., Inc., 136 B.R. 830, 841 (Bankr. C.D.
 4 Cal. 1991); see also, In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983) (standard for
 5 approval of break-up fees is whether the transaction will “further the diverse interests of the
 6 debtor, creditors and equity holders, alike”); In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28
 7 (Bankr. S.D.N.Y. 1989) (finding that bidding incentives may be “legitimately necessary to
 8 convince a white knight to enter the bidding by providing some form of compensation for the
 9 risks it is undertaking”) (citations omitted); In re Marrose Corp., Case Nos. 89 B 12171-12179
 10 (B), 1992 WL 33848, at *5 (Bankr. S.D.N.Y. 1992) (stating that “[a]greements to provide
 11 breakup fees or reimbursement of fees and expenses are meant to compensate the potential
 12 acquirer who serves as a catalyst or ‘stalking horse,’ which attracts more favorable offers”);
 13 Mark F. Hebbeln, THE ECONOMIC CASE FOR JUDICIAL DEFERENCE TO BREAK-UP FEE
 14 AGREEMENTS IN BANKRUPTCY, 13 Bankr. Dev. J. 475, 502-505 (1997) (unless the court
 15 determines that a break-up fee arrangement is tainted with self-dealing, fraud, or bad faith,
 16 courts should accord “substantial deference” to the fiduciary duty of the debtor’s board members
 17 who approved the terms of the break-up fee).

18 Break-up fee arrangements outside bankruptcy are presumptively valid under the
 19 business judgment rule. See In re Integrated Res., Inc., 147 B.R. 650 (Bankr. S.D.N.Y. 1992)
 20 citing Cottle v. Storer Commc’ns, Inc., 849 F.2d 570 (11th Cir. 1988) (US \$29,000,000
 21 termination fee protected by business judgment rule); CRTF Corp. v. Federated Dep’t Stores,
 22 683 F.Supp. 422 (S.D.N.Y. 1988) (break-up fees not illegal when they enhance rather than
 23 hamper bidding). The Integrated Res. court found that courts addressing this issue have
 24 routinely asked the following questions:

25 First, is the relationship of the parties who negotiated the break-up fee tainted by
 26 manipulation such that the business judgment rule should not be applied? A court will uphold a
 27 decision by the board of directors if the decision was safeguarded by the scrutiny of disinterested
 28

1 directors or other means, such as scrutiny by a creditors' committee. See Integrated Res., 147
2 B.R. at 657.

3 Second, does the fee materially hamper bidding? In assessing the incentive or effect of a
4 break-up fee, the court should determine whether the amount of the break-up fee is so substantial
5 that it has a "chilling" effect. See id. at 660.

6 Third, is the amount of the fee unreasonable relative to the proposed purchase price? A
7 break-up fee should constitute a fair and reasonable percentage of the proposed purchase price,
8 and should be reasonably related to the risk, effort and expenses of the prospective purchaser.
9 See id. at 662.

10 As set forth in the Stegmann Declaration, no "self-dealing" or manipulation exists with
11 respect to the letter of intent. Debtor has been marketing its assets. The sales transaction was
12 negotiated at arms-length and is fair and reasonable, particularly given Debtor's financial
13 condition and the circumstances of this case. Buyer negotiated the break-up fee and expense
14 reimbursement simply to compensate itself for the risk it has assumed of losing other business
15 and investment opportunities while the bidding process unfolds, its costs and expenses in the
16 event it is unable to acquire the Assets, and other opportunity costs. Debtor is advised that the
17 break-up fee is based on and is a reflection of the risk, effort and expense anticipated to be
18 incurred by Buyer in negotiating and consummating the terms of the purchase agreement. Given
19 the complexity of the transaction, Debtor is advised that the break-up fee will not result in a
20 "windfall" to Buyer. Additionally, Debtor believes that the break-up fee: (1) encouraged Buyer
21 to make the initial "stalking horse" offer; (2) may discourage a bidding strategy designed to hold
22 back competitive bids until late in the process; (3) aided Debtor in negotiating an initial bid that
23 may be Buyer's highest bid; (4) may establish a high floor early in the bidding process; and
24 (5) has enhanced the bidding process by creating momentum towards the consummation of a
25 sale.

26 Based upon the foregoing, Debtor respectfully requests that the Court approve the break-
27 up fee as set forth above.
28

1 VI.

2 **RELIEF SOUGHT TO BE SOUGHT IN SALE MOTION**

3 The Sale Motion shall seek entry of an order (the "Sale Order"), in form and substance
 4 mutually and reasonably acceptable to Buyer and Debtor, approving and authorizing the
 5 Agreement and the transactions contemplated thereby and providing for all necessary and
 6 customary findings and holdings, including at minimum the following: (i) that the Assets shall
 7 be sold free and clear of any and all Liens, with such Liens, if any, to attach to the consideration
 8 to be received by Debtor in the same priority and subject to the same defenses and avoidability,
 9 if any, as before the Closing, and Buyer would not enter into the Agreement or purchase the
 10 Assets otherwise; and (ii) the transfer of the Assets to Buyer will be a legal, valid and effective
 11 transfer of the Assets, and will vest Buyer with all right, title and interest of Debtor to the Assets
 12 free and clear of any and all Liens, including any such Liens (A) that purport to give or transfer
 13 to any party any right, entitlement or ability to exercise ownership, joint ownership, control or
 14 similar interest whatsoever, or to exercise, utilize or exploit any license, sub-license or similar
 15 interest whatsoever, over, in, relating to, regarding or with respect to any of the Assets, including
 16 without limitation any Intellectual Property, (B) that purport to give to any party a right or option
 17 to effect any forfeiture, modification, right of first refusal, or termination of Debtor's or Buyer's
 18 interest in the Assets, or similar rights, or (C) relating to Taxes or any other Liabilities relating to
 19 the Assets, Debtor, or the Business, other than the Assumed Obligations.

20 VII

21 **GOOD CAUSE EXISTS TO GRANT THIS MOTION**

22 Debtor believes and hereby respectfully represents that good cause exists, under the
 23 circumstances of this case, for this Court's granting of the Motion. Debtor has received an offer
 24 from Buyer for the sale of Debtor's assets, which must be consummated as soon as possible in
 25 order to preserve the bid and maximize value for creditors. Establishing overbid procedures to
 26 all parties in interest in advance of the hearing on the Sale Motion will give prospective bidders
 27 sufficient time to evaluate the relief sought and to determine whether to bid. Granting the relief
 28 sought in the Motion will effect the foregoing.

1 In order to preserve the value of the Assets, Buyer seeks to close promptly on the
2 purchase of Debtor's Assets. Debtor believes that, in order to preserve the sale of the Assets for
3 Debtor, it is in the best interests of Debtor's estate to conclude the sale as expeditiously as
4 possible, taking into consideration the legitimate rights of creditors and parties interested in
5 overbidding to obtain adequate notice of the hearing on, and opportunity to object to, the Sale
6 Motion.

7 **VIII.**

8 **CONCLUSION**

9 For the foregoing reasons, Debtor respectfully requests that the Court grant this
10 Procedures Motion approving the proposed overbid procedure and break-up fee and schedule a
11 hearing on the Sale Motion such that a closing can occur by no later than March 30, 2010.

12 DATED: February 22, 2010

**WINTHROP COUCHOT
PROFESSIONAL CORPORATION**

14 By: /s/ Marc Winthrop
15 Marc J. Winthrop
16 Samir D. Parikh
General Insolvency Counsel for Debtor and
Debtor-in-Possession

1 **DECLARATION OF DR. THOMAS J. STEGMANN**

2 I, Dr. Thomas J. Stegmann, hereby declare and state as follows:

3 1. I am the Chief Executive Officer of Phage Biotechnology Corporation, the
4 debtor and debtor-in-possession herein (the "Debtor"). The facts stated herein are within my
5 personal knowledge or information, whether acquired directly, or through my familiarity with
6 Debtor. The opinions expressed herein represent the opinions of Debtor entity, of which I am
7 an authorized agent, unless otherwise indicated.

8 2. From the outset of this case, Debtor's ability to reorganize its financial affairs in
9 Chapter 11 has been dependent upon, among other things, access to cash to enable Debtor to
10 pursue U.S. Food and Drug Administration ("FDA") approval of its bio-generic and proprietary
11 drug portfolio. Unfortunately, Debtor has been unable to generate sufficient revenues to
12 internally finance its operations, and has similarly been unable to obtain the requisite amount of
13 financing it believes is necessary to pursue its business strategy. Moreover, Debtor's ability to
14 generate profits is hampered by the significant administrative costs associated with the
15 bankruptcy and the negative effect on sales resulting from the stigma associated with operating
16 as a debtor-in-possession.

17 3. Fortunately, through Debtor's pre-petition and post-petition marketing efforts,
18 Debtor has identified a strategic buyer who has proposed to purchase substantially all its assets
19 ("Assets") for an amount greater than liquidation value, which would maximize the return to
20 creditors. Based on Debtor's current financial condition, the weak economy, and the lack of
21 offers received for the Assets, Debtor believes that a prompt sale of Debtor's Assets is
22 necessary to maximize value and recovery to creditors. Debtor has been seeking a buyer or
23 financial partner since October 2008. A list of all contacts/companies that were contacted is
24 attached hereto as Exhibit A.

25 4. While the specific amount of the proposed bid submitted by Buyer cannot be
26 precisely determined at this time (though estimated to be net less than \$2,700,000), based on the
27 structure of the proposal, the proposed bid clearly provides substantially more value than would
28

1 be realized in a liquidation sale. Moreover, Debtor's cash resources and DIP Loan availability
2 will likely be substantially exhausted by March 30, 2010.

3 5. A court-approved uniform sale and bidding procedures and guidelines can lead
4 to an orderly sale at the hearing thereon. In this regard, it is necessary to obtain a Court order
5 approving the proposed overbid procedures and break-up fee as soon as possible to include in
6 the court-approved sale and overbid procedures in the Sale Motion

7 6. Debtor is in the business of developing and commercializing an efficient method
8 of manufacturing bio-pharmaceuticals with its proprietary technology. On October 2, 2008,
9 certain creditors commenced an involuntary Chapter 7 case against Debtor (the "Petition Date").
10 On October 28, 2008, the Court entered an order for relief converting this case into a voluntary
11 Chapter 11 case.

12 7. Debtor is a Delaware corporation with its corporate office and operating facilities
13 located in San Diego, California. Debtor currently employs 11 people, including part time
14 employees and consultants of various kinds. From Debtor's inception until October 7, 2008,
15 Debtor's Chairman, President, and CEO was Daniel Montano ("Montano"). Mr. Montano
16 resigned from all positions with Debtor on or about October 7, 2008.

17 8. Debtor was founded in 1998 to commercialize an efficient method of
18 manufacturing bio-pharmaceuticals that were invented by a group of Ukrainian scientists. As a
19 development stage company which is still not generating significant revenue, Debtor depends
20 significantly on external funding for survival and progress. A majority of the external funding
21 provided to Debtor prior to the Petition Date came from the holders (the "Noteholders") of
22 Debtor's promissory notes (the "Notes"). Debtor's promissory notes were issued at various
23 dates from 2001 through to 2004 with a three-year maturity date. Debtor raised a total of
24 approximately \$16,700,000 in the period from 2001 to 2005 from two series of convertible
25 promissory notes. Series I totaled approximately \$11,600,000 principal with 233 Noteholders
26 and Series II totaled approximately \$5,100,000 of principal with 20 Noteholders. The principal
27 and accrued interest of these Notes now total approximately \$23,500,000, or approximately
28 75% of Debtor's total debt. The corporate books of record of Debtor are unaudited.

1 9. Debtor has a contractual relationship with Phage Biotech Ukraine LLC, located
2 in Kiev, Ukraine ("Phage Ukraine"), which employs a research team and supports the San
3 Diego manufacturing facility. Substantially all of Debtor's original intellectual property was
4 sourced from Phage Ukraine.

5 10. Debtor's intellectual property includes numerous U.S. patents and related foreign
6 patent approvals in European countries with large markets for Debtor's drugs. In Japan, three
7 of Debtor's U.S. Patents are currently being examined.

8 11. Debtor's main route to commercialization and profitability has always been to
9 seek further revenue generating activities for its licensed San Diego manufacturing facility, and
10 to gain FDA approval for its bio-generic and proprietary drug portfolio to be manufactured by
11 the Phage process. At present two compounds are in FDA clinical trials: Phage's Human
12 Growth Hormone ("HGH"), and Phage's Fibroblast Growth Factor 1 ("FGF-1").

13 12. Debtor's financial problems and the consequent need to file this bankruptcy
14 proceeding were primarily caused by a variety of factors. As a start-up company, Debtor has
15 minimal income and thus needs infusions of outside capital in order to fund its operations of
16 developing and commercializing its intellectual property. From 1998 to 2008, Debtor raised net
17 capital proceeds of approximately \$24,500,000 from common and preferred stock, and note and
18 loan financing. However, from late summer 2005 until summer of 2008, Debtor only raised net
19 proceeds of approximately \$6,000,000 million of outside capital which was grossly inadequate
20 in relation to Debtor's needs, maturing Note obligations, and the scale of its opportunity. This
21 failure to raise sufficient capital in the last several years led to Debtor defaulting on its Note
22 obligations, as well as obligations to other creditors.

23 13. Buyer is a limited private company organized under the laws of the Republic of
24 Singapore.

25 14. Debtor has been actively marketing itself for investment or sale since October
26 2008. Since the filing, Debtor has redoubled its efforts and has been actively seeking an
27 investor to infuse capital into Debtor to file a plan of reorganization. Debtor has been in regular
28

1 contact with the creditors' committee to report on these results, which, to date, have yielded no
2 results.

3 15. The prompt sale of the Assets will maximize the value of Debtor's estate. The
4 following is a summary of the general terms that are embodied in the Asset Purchase
5 Agreement (the "Agreement") proposed by Buyer.

6 16. Based on the offer made by Buyer, Debtor proposes to the Assets to Buyer (the
7 "Purchased Assets"). At Closing (as defined below), Buyer will pay to Debtor the purchase
8 price pursuant to the following: (i) \$2,000,000 in the form of a reduction and satisfaction of an
9 equivalent amount of the various debtor in possession financing obligations Debtor has to Buyer
10 (any and all such loans and debts outstanding at any time, including principal, accrued interest
11 and fees, hereinafter referred to as the "DIP Loan"); (ii) the assumption of the DIP Loan in
12 excess of \$2,000,000 (and, in the event Buyer, subject to further agreement(s) with Debtor and
13 subject to Bankruptcy Court approval, Buyer is requested to and elects to provide additional
14 financing to Debtor, an such additional financing shall be known as the "Overadvance");
15 provided, however, in the absence of any Overadvance and to the extent the DIP Loan at Closing
16 is less than \$2,500,000, Buyer shall pay to Debtor the difference between the DIP Loan and
17 \$2,500,000; and (iii) shares of the Common Stock of Buyer constituting ten (10%) percent of the
18 fully-diluted post-Closing equity of Buyer (the "Equity Shares"); provided, however, that (a) to
19 the extent the DIP Loan exceeds \$2,500,000 and/or (b) if any Overadvance exists, the Equity
20 Shares shall be reduced by ten (10%) percent for each \$20,000 increment of the aggregate total
21 amount (x) that the DIP Loan exceeds \$2,500,000 and (y) of the Overadvance (collectively, the
22 "Purchase Price").

23 17. Buyer is requiring that this sale shall close no later than March 30, 2010
24 ("Closing"). At Closing, in the event Buyer has the highest bid, the deliveries constituting the
25 Purchase Price shall be effected and to the extent applicable, delivered for deposit into the
26 attorney trust account of Debtor's counsel.

27 18. Buyer has requested and Debtor proposes the following overbid procedures in
28 connection with the proposed sales transaction:

1 (i) Binding offers to purchase the Assets to be sold under the Agreement
2 (“Qualified Offers”) may be submitted up to three (3) days prior to the date a final
3 hearing is scheduled for the approval (the “Final Hearing”) of the Agreement and any
4 ancillary documents required in such Agreement. Two (2) business days prior to the
5 Final Hearing, a meeting (the “Offer Evaluation Process”) will be held at Winthrop
6 Couchot Professional Corporation, 660 Newport Center Drive, Fourth Floor, Newport
7 Beach, California 92660, the offices of counsel to Debtor, for Debtor to determine in its
8 discretion, after consultation with its Creditors’ Committee, that proceeding with the
9 Offer Evaluation Process is appropriate.

10 (ii) Each Qualified Offer must include (i) a mark up of the Agreement to the
11 extent a Qualified Offer contemplates material changes thereto, (ii) detailed information
12 about the party making the Qualified Offer, including its financial and other capacity to
13 consummate the transaction, (iii) an identification of any executory contracts and leases
14 to be assumed by the party making the Qualified Offer, and (iv) information sufficient to
15 demonstrate that the party making the Qualified Offer will be able to provide parties to
16 such contracts and leases with adequate assurance of its ability to perform under them.
17 Although a Qualified Offer may be subject to some contingencies, any such
18 contingencies shall be considered by Debtor when evaluating and comparing Qualified
19 Offers.

20 (iii) During the Offer Evaluation Process, Debtor shall evaluate the offers of
21 any Qualified Offers submitted during the Offer Evaluation Process, provided that (i) any
22 initial Qualified Offers provide consideration for the Assets that exceeds the
23 consideration offered for such Assets by Buyer plus the Stalking Horse Protections (as
24 defined below in (18)(iv)) (calculated under the assumption that the Stalking Horse
25 Protections will aggregate approximately \$300,000) and (ii) any such initial Qualified
26 Offers provide a minimum cash component equal to the aggregate of (A) the DIP Loan
27 outstanding at Closing and the Overadvance, if any, outstanding at Closing plus (B) the
28 Stalking Horse Protections, plus (C) all administrative and priority expense claims. Any

1 successive Qualified Offers (in the event of an auction or similar process) shall be
2 considered only if they exceed the previous offer by \$50,000. In comparing offers during
3 the Offer Evaluation Process, and to the extent the Stalking Horse Protections are
4 approved by the Court, the parties shall consider that selecting the offer of Buyer would
5 avoid having to pay Buyer the Stalking Horse Protections. Debtor may recess the Offer
6 Evaluation Process from time to time in its discretion in order to assess Qualified Offers
7 or permit participants to alter or increase their Qualified Offers. Debtor may conduct the
8 Offer Evaluation Process as an auction, a series of negotiations or whatever other means
9 it determines to be appropriate in its business judgment.

10 (iv) If the Assets to be sold pursuant to the Agreement are sold other than to
11 Buyer (or an affiliate of Buyer) in accordance with the procedures provided in the Sale
12 Motion, then Buyer shall be paid, out of the cash proceeds of such sale, (i) the sum of
13 \$100,000 (the "Break-Up Fee") and (ii) Buyer's reasonable and necessary out-of-pocket
14 fees and costs, including costs of counsel, in an amount not to exceed \$200,000 (the
15 "Expense Reimbursement", and together with the Break-Up Fee, collectively the
16 "Stalking Horse Protections"). The Stalking Horse Protections shall be entitled to status
17 and payment as a super-priority administrative expense in Debtor's bankruptcy case.

18 (v) Debtor shall have the sole and absolute discretion, subject to approval of
19 the Court, to determine the relative value of any Qualified Offer(s), to determine whether
20 to accept or reject any Qualified Offer(s), subject to Buyer's entitlement to the Stalking
21 Horse Protections as set forth herein, and to determine which Qualified Offer(s) it deems
22 to be the highest and best offer available. Specifically, in evaluating competing Qualified
23 Offers, Debtor shall not be limited to price as the determinative factor, but may consider
24 other factors, including, without limitation, the financial qualifications of the party or
25 parties submitting the Qualified Offer(s) and the likelihood that the proposed acquisition
26 transaction will close within a timeframe acceptable to Debtor.

27 (vi) If Buyer's final bid is not the highest bid, upon the closing of a sale of the
28 Assets to another entity, Buyer shall be delivered the Stalking Horse Protection (as well

1 as receive full payment of the DIP Loan and any Overadvance). If Buyer is the
2 successful bidder, then it must tender the consideration constituting its successful bid.

3 19. Establishing uniform procedures for bidding on the Assets will allow Debtor and
4 the Court to promptly review, analyze and compare all bids received to determine which bid is in
5 the best interests of Debtor. Additionally, the proposed overbid procedures are fair and
6 equitable.

7 20. If the Assets are sold other than to Buyer (or an affiliate of Buyer) in accordance
8 with the procedures provided herein and in the Sale Motion, then Buyer shall be paid, out of the
9 cash proceeds of such sale, the Stalking Horse Protections. The Stalking Horse Protections shall
10 be entitled to status and payment as a super-priority administrative expense in this bankruptcy
11 case, but shall be payable only from the cash proceeds of the sale of the Assets.

12 21. The overbid procedures set forth above are reasonable. In the context of
13 bankruptcy, sales such as the pending transaction between Debtor and Buyer become even more
14 challenging, due in part to a Debtor's duty to maximize the value of estate assets and the
15 obligation to encourage competitive bidding in order to achieve the highest and best price. It is
16 clear that few potential buyers of the Assets would be willing to enter into a purchase agreement
17 in the context of a bankruptcy proceeding without some assurance that, on the one hand, the
18 "stalking horse" protections are provided to the initial catalytic purchaser, and on the other hand,
19 that the bidding process will be fair and equitable and will treat all parties equally.

20 22. The proposed overbid procedures are fair and equitable, and treat all parties
21 equally. Moreover, the amount of the initial overbid in this case and subsequent overbids are
22 necessary to encourage bidding for the Assets.

23 23. Aside from the proposed overbid procedures, Buyer has required a "break-up" fee
24 in the event that an overbid occurs and Buyer is not the ultimate purchaser of the Assets.
25 Specifically, under the terms of the Agreement, in the event that another party is successful in
26 purchasing the Assets, Debtor is required to pay to Buyer the Stalking Horse Protections to
27 compensate Buyer for its costs and expenditures, including lost opportunity costs. Of significant
28 import, under such circumstance, the break-up fee will be paid upon the closing of the sale to the

1 alternative successful bidder and shall be paid from the proceeds of the purchase price tendered
2 by the successful bidder in connection with the Qualifying Competing Proposal.

3 24. No manipulation exists with respect to the Agreement. Debtor has been
4 marketing its assets. The sales transaction was negotiated at arms-length and is fair and
5 reasonable, particularly given Debtor's financial condition and the circumstances of this case.
6 Buyer negotiated the break-up fee and expense reimbursement simply to compensate itself for
7 the risk it has assumed of losing other business and investment opportunities while the bidding
8 process unfolds, its costs and expenses in the event it is unable to acquire the Assets, and other
9 opportunity costs. Debtor is advised that the break-up fee is based on and is a reflection of the
10 risk, effort and expense anticipated to be incurred by Buyer in negotiating and consummating the
11 terms of the purchase agreement. Given the complexity of the transaction, Debtor is advised that
12 the break-up fee will not result in a "windfall" to Buyer. Additionally, Debtor believes that the
13 break-up fee: (1) encouraged Buyer to make the initial "stalking horse" offer; (2) may
14 discourage a bidding strategy designed to hold back competitive bids until late in the process;
15 (3) aided Debtor in negotiating an initial bid that may be Buyer's highest bid; (4) may establish a
16 high floor early in the bidding process; and (5) has enhanced the bidding process by creating
17 momentum towards the consummation of a sale.

18 25. Good cause exists, under the circumstances of this case, for this Court's granting
19 of this Procedures Motion. Debtor has received an offer from Buyer for the sale of Debtor's
20 Assets, which must be consummated as soon as possible in order to preserve the bid and
21 maximize value for creditors. Establishing overbid procedures to all parties in interest in
22 advance of the hearing on the Sale Motion will give prospective bidders sufficient time to
23 evaluate the relief sought and to determine whether to bid. Granting the relief sought in the
24 Motion will effect the foregoing.

25 26. In order to preserve the value of the Assets, Buyer seeks to close promptly on the
26 purchase of Debtor's Assets. Debtor believes that, in order to preserve the sale of the Assets for
27 Debtor, it is in the best interests of Debtor's estate to conclude the sale as expeditiously as
28 possible, taking into consideration the legitimate rights of creditors and parties interested in

1 overbidding to obtain adequate notice of the hearing on, and opportunity to object to, the Sale
2 Motion.

3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct to the best of my knowledge.

5 Executed this 22nd day of February 2010, at Petersburg, Germany.

6
7 /s/ Dr. Thomas J. Stegmann

8 Dr. Thomas J .Stegmann
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Phage Biotechnology Corporation
List of contacts/interested parties/potential investors/potential
cooperations
November 2008 – February 2010

1.	Abbott Laboratories, Abbott Park, IL, USA, www.abbott.com U.S. Corporate Headquarters Abbott Laboratories 100 Abbott Park Road Abbott Park, Illinois 60064-3500 Telephone: (847) 937-6100
2.	Achillion Pharmaceuticals, Inc., New Haven, CT, USA, www.achillion.com Headquarters Achillion Pharmaceuticals, Inc. 300 George Street New Haven, CT 06511 Telephone: 203-624-7000 Fax: 203-624-7003
3.	Advanced BioHealing, Inc., Wayne, PA, USA, www.advancedbiohealing.com Corporate Offices 36 Church Lane Westport, CT 06880
4.	Anadys Pharmaceuticals, Inc., San Diego, CA www.anadyspharma.com Corporate Headquarters Anadys Pharmaceuticals, Inc. 5871 Oberlin Drive, Suite 200 San Diego, CA 92121 Tel: (858) 530-3600 Fax: (858) 527-1540 E-mails: Business Development - clogan@anadyspharma.com Corporate Communications - cc@anadyspharma.com Human Capital - hc@anadyspharma.com
5.	Angelico Ventures, Moscow, Russia, www.angelicobiotech.com Angelico Ventures 9-105 Esseninsky boulevard 109439 Moscow, Russia Phone: +7 916 3888355 E-mail: Web: www.angelicobiotech.com

Exhibit A
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6.	<p>Avila Therapeutics, Inc., Waltham, MA, USA, www.avilatx.com Avila Therapeutics, Inc. 100 Beaver Street Waltham, MA 02453 Telephone: 781-891-0086 Facsimile: 781-891-0069 Email: info@avilatx.com</p>
7.	<p>BioMarin Pharmaceutical Inc., Novato, CA, USA, www.bmrn.com Headquarters BioMarin Pharmaceutical Inc. 105 Digital Drive Novato, CA 94949 Tel: 415-506-6700 Fax: 415-382-7889 Investor Relations: ir@bmrn.com Business Development: bd@bmrn.com</p>
8.	<p>BioMed Transition Partners, New York, USA, www.Biomedtransitionpartners.com Headquarters BioMarin Pharmaceutical Inc. 105 Digital Drive Novato, CA 94949 Tel: 415-506-6700 Fax: 415-382-7889 Investor Relations: ir@bmrn.com Business Development: bd@bmrn.com</p>
9.	<p>Biopartners GmbH, Baar, Switzerland, www.biopartners.ch International Headquarters: Biopartners GmbH Baarermatte 6340 Baar Switzerland Telephone +41 (0) 41 766 20 80 Fax +41 (0) 41 766 20 81</p>
10.	<p>Biotech Turnaround Fund BV, Haarlem, The Netherlands, www.btf.eu BTF Kenaupark 3 2011 MP Haarlem The Netherlands</p> <p>BTF Geyserville P.O. Box 347 Geyserville, CA 95441 USA T +31 (0)23 - 55 33 988 F +31 (0)23 - 55 33 980</p> <p style="text-align: right;">A 29</p>

11.	Bloom Burton & Co., Toronto, Canada, www.bloomburton.com 65 Front Street East Suite 300 Toronto, ON M5E 1B5 T 416-640-7580 Email: bbloom@bloomburton.com
12.	Boehringer Ingelheim Pharma GmbH & Co. KG, Ingelheim, Germany, www.boehringer-ingelheim.de Binger Straße 173 55216 Ingelheim am Rhein E-Mail: presse@boehringer-ingelheim.de Telefon: 06132 / 77-0 Telefax: 06132 / 72-0
13.	Bristol-Myers Squibb, New York, USA, www.bms.com Corporate Headquarters 345 Park Avenue New York, New York 10154 Customer Relations at 800-332-2056
14.	Cangene Corporation, Winnipeg, MB, Canada, www.cangene.com Head Office/Manufacturing 155 Innovation Drive Winnipeg, MB, Canada R3T 5Y3 Tel: (204) 275-4200 Fax: (204) 269-7003
15.	Critical Pharmaceuticals Ltd., Nottingham, UK, www.criticalpharmaceuticals.com BioCity Nottingham Pennyfoot Street Nottingham NG1 1GF United Kingdom Tel.: +44 (0)115 8820 100 E-mail: info@criticalpharmaceuticals.com
16.	Debiopharm Group, Lausanne, Switzerland, www.debiopharm.com Debiopharm S.A. & Debioinnovation Forum "après-demain" Chemin Messidor 5-7 Case postale 5911 CH - 1002 Lausanne Switzerland T+41 (0) 21 321 0111 F+41 (0) 21 321 0169 Debiopharm Galenic Unit 14, Rte des Avouillons CH - 1196 Gland

Exhibit

Page

	<p>Switzerland T+41 (0) 22 354 88 88 F+41 (0) 22 354 88 89</p> <p>Debio Recherche Pharmaceutique S.A. Route du Levant 146 CH-1920 Martigny Switzerland T+41 (0) 27 721 7900 F+41 (0) 27 721 7901</p> <p>Debioclinic S.A. 2, rue du Nouveau Bercy F- 94220 Charenton-le-Pont France T+33 (0) 1 43 53 64 30 F+33 (0) 1 43 53 64 39</p>
17.	<p>Eli Lilly and Company, Indianapolis, IN, USA, www.lilly.com Lilly Corporate Center Indianapolis, Indiana 46285 USA Phone: +1-317-276-2000</p> <p>Intercontinental (Asia, Latin America, Canada, Australia) Lilly Corporate Center Mail Drop Code 1854 Indianapolis, Indiana 46285 U.S.A</p> <p>ICR Telephone Calls Only: +1-317-276-2790 U.S. Switchboard: +1-317-276-2000 Fax: +1-317-276-4878</p>
18.	<p>Emisphere Technologies, Inc., Cedar Knolls, NJ, USA, www.emisphere.com Corporate Headquarters: 240 Cedar Knolls Road Cedar Knolls, New Jersey 07927-1621 973-532-8000 (phone) 973-532-8115 (fax)</p>
19.	<p>EUGENEX Biotechnologies GmbH, Taegerwilen, Switzerland, www.eugenex.com Telephone Office ++49 (0)7533 97623 Telephone Lab++41 (0)71 666 43 60 AND ++41 (0)71 666 43 61 Cellular ++49 (0)177 77 97623 FAX ++49 (0)7533 97624</p> <p>Postal address EUGENEX Biotechnologies Konstanzerstrasse 19 CH-8274 Tägerwilen</p> <p>Exhibit <u>A</u> Page <u>31</u></p>

	Switzerland Electronic mail General Information: info@eugenex.com Sales: sales@eugenex.com Customer Support: support@eugenex.com
20.	Firminvest AG, Zuerich, Switzerland, www.moneyhouse.ch/u/firminvest_ag_CH Lindenstrasse 16 CH - 6340 Baar
21.	Genentech Inc. San Francisco, CA, USA, www.gene.com Corporate Headquarters Genentech, Inc. 1 DNA Way South San Francisco, CA 94080-4990 Phone: (650) 225-1000 Fax: (650) 225-6000
22.	Genmab A/S, Copenhagen, Denmark, www.genmab.com Genmab A/S General inquiries: info@genmab.com Business development inquiries: licensing@genmab.com <u>Visiting Address -</u> Bredgade 34 1260 Copenhagen K Denmark <u>Postal Address</u> P.O. Box 9068 1260 Copenhagen K Denmark Telephone + 45 7020 2728 Fax + 45 7020 2729 Helle Husted, M.A. Vice President, Investor Relations h.husted@genmab.com
23.	Gilead Sciences, Inc., Foster City, CA, USA, www.gilead.com Foster City, CA (Headquarters): 333 Lakeside Drive Foster City, CA 94404 Phone: (650) 574-3000 Fax: (650) 578-9264 1-800-GILEAD-5 (1-800-445-3235)
24.	Human BioSciences GmbH, Luckenwalde, Germany, www.humanbiosciences.de Human BioSciences GmbH Im Biotechnologiepark, TGZ I D-14943 Luckenwalde Tel. +49(0)3371-681601

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	Fax +49(0)3371-681600
25.	<p>Idenix Pharmaceuticals, Inc., Cambridge, MA, USA, www.idenix.com US Headquarters: Idenix Pharmaceuticals, Inc. 60 Hampshire Street Cambridge, MA 02139 Tel: 617-995-9800 Fax: 617-995-9801 Email: idenix@idenix.com</p>
26.	<p>ImmuPharma PLC, London, UK, www.immupharma.com ImmuPharma plc 50 Broadway Westminster London SW1H 0RG UK Tel: +44 20 7152 4080 Fax: +44 20 7152 4001</p>
27.	<p>India Globalization Capital, Bethesda, MD, USA, www.indiaglobalcap.com U.S.A. Office: 4336 Montgomery Ave. Bethesda, MD 20814</p> <p>Office Phone: 1-301-983-0998 FAX: 1-240-465-0273 EMAIL: info@indiaglobalcap.com</p> <p>Mailing address: India Globalization Capital, Inc. P.O. Box 60642 Potomac, MD 20859-0642 USA</p>
28.	<p>Indocan Capital, Toronto, Canada, and Mumbai, India, www.indocancapital.com Canada 1117 Queen Street West PO Box 732 Toronto, ON M6J 3X7</p> <p>India Office Office No. 35, 3rd Floor 5, Contractor Bldg, Vaju Kotak Marg Ballard Estate, Mumbai – 400 001 96191 26656 info@indocancapital.com</p> <p style="text-align: right;">Exhibit <u> A </u> Page <u> 33 </u></p>

29.	Inhibitex Inc, Alpharetta, GA, USA, www.inhibitex.com Inhibitex, Inc. 9005 Westside Parkway Alpharetta, Georgia 30009 678.746.1100
30.	LinkCore Pharma Corporation, Vancouver, Canada, www.linkcorepharma.com 605-1749 Robson Street Vancouver, British Columbia V6G 1E1 Canada T 604-488-8880 F: 604-682-5686
31.	LUCRUM Industries, Germany, www.lucrum-ag.de Lucrum Industries GmbH Rotdornstraße 7 40667 Meerbusch HRB: 9907 Amtsgericht Neuss Telefon: +49 (0) 21 32 – 97 18 3-4 Telefax: +49 (0) 21 32 – 97 18 3-5 eMail: info@lucrum-ag.de Internet: www.lucrum-ag.de
32.	Medivir AB, Stockholm, Sweden, www.medivir.se Medivir AB PO Box 1086 SE-141 22 Huddinge, Sweden Visit: Lunastigen 7, Huddinge Phone +46 8 5468 3100 Fax +46 8 5468 3199 E-mail: info@medivir.se For more information about Medivir, please contact: Rein Piir, CFO and VP Investor Relations Phone +46 8 5468 3123 E-mail: rein.piir@medivir.se Paul Wallace, VP Business Development Phone +44 1799 532 106 E-mail: paul.wallace@medivir.com Johan Inborr, Director of Business Development, Lipsovir® partnering Phone: +46 8 5468 3189 Mobile: +46 708 853 893 E-mail: johan.inborr@medivir.se
33.	Merck Research Labs, Rahway, NJ, USA, www.merckvaccines.com Merck Vaccine Customer Center at 1-877-VAX-MERCK (1-877-829-6372)
34.	Merck/Serono S/A, Geneva, Switzerland, www.merckserono.net Merck KGAA Headquarters Merck KGaA Frankfurter Str. 250

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35.	<p>Migenix Inc., Vancouver, BC, Canada, www.migenix.com Vancouver Office MIGENIX Inc. Suite 400 - 1727 West Broadway Vancouver, BC V6J 4W6 Canada</p> <p>Telephone: (604) 221-9666 Facsimile: (604) 221-9688 E-mail: info@migenix.com INVESTOR RELATIONS Paul Brennan Telephone: 604-221-9666 Facsimile: 604-221-9688 E-mail: info@migenix.com</p> <p>BUSINESS DEVELOPMENT Paul Brennan Telephone: 604-221-9666 Facsimile: 604-221-9688 E-mail: info@migenix.com</p> <p>BOARD CONTACT Doug Johnson c/o MIGENIX Inc. 102 - 2389 Health Sciences Mall Vancouver, BC V6T 1Z3 Tel: (604) 221-9666</p>
36.	<p>Novo Nordisk Inc., Princeton, NJ, USA, www.novonordisk-us.com Novo Nordisk Inc. 100 College Road West Princeton, NJ 08540 (609) 987-5800</p> <p style="text-align: right;">A 35</p>

37.	Otsuka Pharmaceutical Company Ltd., Tokyo, Japan, www.otsuka.com Head Office 2-9 Kanda-Tsukasamachi, Chiyoda-ku, Tokyo 101-0048 Tokyo Headquarters Shinagawa Grand Central Tower 2-16-4 Konan, Minato-ku, Tokyo 108-8241 TEL: +81 (0)3-6717-1410 (switchboard)
38.	Pfizer Inc., New York, USA, www.pfizer.com 235 East 42nd Street NY, NY 10017 Phone: 1-212-733-2323
39.	Phenomix Corporation, San Diego, CA, USA, www.phenomixcorp.com Phenomix Corporation Phone: +1.858.731.5200 Fax: +1.858.731.5225 info@phenomix.com 5930 Cornerstone Court West, Suite 230 San Diego, CA 92121 Media & Investor Relations Pam Lord Porter Novelli Life Sciences Phone: 619-849-6003 plord@pnlifesciences.com
40.	Prozor Biotech, Inc. (formerly Modigene Inc.), Nes Ziona, Israel, www.prozor-biotech.com 3 Sapir Street Weizmann Science Park Nes Ziona P.O. Box 4101 Israel 74140 Phone: 866-644-7811 Fax: +(972)-8-9300091 Email: info@modigeneinc.com
41.	Quantum Pharmaceuticals, Moscow, Russia, q-pharm.com Contacts: office@q-pharm.com
42.	Rising Sun Holdings Inc., New York, USA, www.rshinc.com NO INFORMATION ON THE WEBSITE. NEED LOGIN
43.	Rusnano (Russian Corporation of Nanotechnologies), Moscow, Russia, www.nanowerk.com US Office Nanowerk LLC 700 Bishop Street, 17th Floor, Suite 1700 Honolulu, HI 96813

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44.	<p>Safeguard Scientifics, Inc., Wayne, PA, USA, www.safeguard.com 435 Devon Park Drive Building 800 Wayne, PA 19087 Telephone: 610-293-0600 Fax: 610-293-0601 Investor Relations: IR@safeguard.com</p>
45.	<p>Sandoz/Novartis Sandoz International GmbH, Holzkirchen, Germany, www.sandoz.de Sandoz Pharmaceuticals GmbH Raiffeisenstr. 11 83607 Holzkirchen Telefon: +49(0) 8024 9024 0 Fax: +49(0) 8024 9024 100 E-Mail: info@sandoz.de</p>
46.	<p>Shenyang Sunshine Pharmaceutical Company Ltd. (3SBIO), Shenyang, China, http://bbs.3sbio.com/en/Indexen.aspx China: Bo Tan, CFO 3SBio Inc. Tel: +86(24) 2581-1820 e-mail: ir@3sbio.com Tom Folinsbee, Director of Investor Relations 3SBio Inc. Tel: (HK) (852) 8191-6991 e-mail: tfolinsbee@3SBio.com</p>
47.	<p>SibEnzyme Ltd. (Siberian Enzyme, SE), Academtown, Russia, www.sibenzyme.com SibEnzyme US LLC Address: SibEnzyme US LLC, 2 Franclaire Drive, West Roxbury, MA 02132, USA phone: 781-915-7170 fax: 617-553-0856 E-mail: info@sibenzymeus.com web site: www.sibenzymeus.com</p> <p>Address: SibEnzyme Ltd. 2/12, Ak. Timakova Street Novosibirsk-117 630117, Russia phone: +7 3833 334991 fax: +7 3833 336853 E-mail: info@sibenzyme.com SE web site: www.sibenzyme.com</p> <p style="text-align: right;">Exhibit <u>A</u> <u>317</u></p>

48.	<p>Sixpoint Partners, LLP, New York, USA, www.sixpointpartners.com Sixpoint Partners 909 Third Avenue 15th Floor New York, NY 10022 Telephone (212) 751-8690 Fax (212) 751-0197 E-mail us at: info@sixpointpartners.com</p>
49.	<p>Teva Pharmaceutical Industries Ltd., Petach Tikva, Israel, www.tevapharm.com Corporate Headquarters 5 Basel St. Petach Tikva 49131, Israel ☎Tel: +972-3-9267267 ☎Fax: +972-3-9234050</p> <p>Investor Relations <u>Request for Investor's Information</u> ☎Tel: +972-3-9148292 ☎Tel: (215) 591-8912</p>
50.	<p>The Channel Group, LLC, New York, USA, www.thechannelgroup.com The Channel Group, LLC 1133 Broadway, Suite 706 New York, NY 10010 USA Tel: (212) 330-8076 Fax: (212) 627-8877 E-mail: info@TheChannelGroup.com Robert J. Beckman RBeckman@TheChannelGroup.com Allan R. Goldberg, Ph.D. AGoldberg@TheChannelGroup.com Philip N. Sussman PSussman@TheChannelGroup.com</p>
51.	<p>Tibotec BVBA, Mechelen, Belgium, www.tibotec.com Tibotec BVBA tel: +32 15 46 11 00 fax: +32 15 46 19 51 email: tibbe-info@its.jnj.com Gen De Wittelaan L 11B 3 2800 Mechelen Belgium</p> <p>Tibotec Pharmaceuticals + 353 21 4673500 + 353 21 4673520 Eastgate Village Eastgate Little Island</p> <p style="text-align: right;">A 38</p>

	<p>Co Cork Ireland</p> <p>Tibotec, Inc. +1 609 730 7500 +1 609 730 7501 1020 Stony Hill Road Suite 300 Yardley, PA 19067 USA</p>
52.	<p>Triangle Consulting Group Ltd., London, UK, and Moscow, Russia, www.triangleconsulting.ru Triangle Consulting Group 30, bld.2, Prospect Mira, 129090 Moscow Phone: +7 (495) 771 69 38 Fax: +7 (495) 680 36 79 E-mail: info@triangleconsulting.ru Triangle Consulting Group Ltd. Palladium House, 1-4 Argyll Street, London W1F 7LD. E-mail: info@triangleconsulting.ru</p>
53.	<p>Triginta Capital GmbH, Duesseldorf, Germany, www.triginta-capital.com Triginta Capital GmbH Steinstraße 20 D-40212 Düsseldorf Telephone: +49 (0) 211 / 8 62 89 -0 Telefax: +49 (0) 211 / 8 62 89 -455 Email: info@triginta-capital.com</p> <p>Triginta Capital GmbH Markgrafenstraße 33 D-10117 Berlin Telephone: +49 (0) 30 / 69 20 63 04 -0 Telefax: +49 (0) 30 / 69 20 63 04 -9 Email: info@triginta-capital.com</p>
54.	<p>ViroChem Pharma, Inc., Laval, QC, Canada, www.virochempharma.com Contact Us Corporate Headquarters 130 Waverly Street Cambridge, MA 02139 Tel: 617-444-6100</p> <p>San Diego Office: 11010 Torreyana Road San Diego, CA 92121 Tel: 858-404-6600 Fax: 858-404-6726</p>

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55.	<p>ZUBER M & A Partners, Germany, www.zuber-m-and-a-partners.com Corporate Headquarters: ZUBER M & A Partners, Inc. 502 East John Street Carson City, Nevada 89706, USA CEO Chief Executive Officer: Gunther J. Zuber</p> <p>Subsidiary: ZUBER International GmbH Bamberger Street 1 D-36039 Fulda / Germany Tel. +49 - 6 61 - 5 17 70 Fax: +49 - 6 61 - 5 78 07 Email: g.j.zuber@t-online.de Website: zuber-m-and-a-partners.com Managing Director: Gunther J. Zuber g.j.zuber@t-online.de</p>
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February 11, 2010

Thomas J. Stegmann, MD, PhD
CEO & President
Phage Biotechnology Corporation

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NOTE: When using this form to indicate service of a proposed order, DO NOT list any person or entity in Category I.
Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 660 Newport Center Drive, 4th Fl., Newport Beach, CA 92660.

A true and correct copy of the foregoing document described as **DEBTOR'S MOTION FOR ORDER**

(1) APPROVING OVERBID PROCEDURES AND BREAK-UP FEE IN CONNECTION WITH PROPOSED SALE OF SUBSTANTIALLY ALL ASSETS OF THE ESTATE, AND (2) SETTING HEARING ON MOTION FOR SALE OF SUBSTANTIALLY ALL ASSETS OF ESTATE; MEMORANDUM OF POINTS AND AUTHORITIES; AND DECLARATION OF DR. THOMAS J. STEGMANN IN SUPPORT THEREOF will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On February 22, 2010 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

☒ Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served):

On _____ I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on

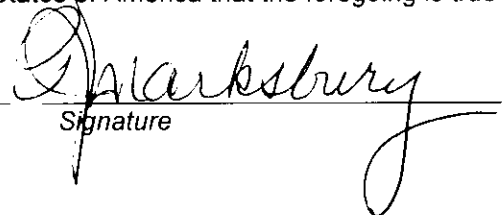
_____, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

February 22, 2010 PJ Marksbury
Date Type Name

Signature



NEF SERVICE LIST

- Michael D. Breslauer mbreslauer@swsslaw.com, wyones@swsslaw.com
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- Matthew J. Riopelle mriopelle@foley.com
- United States Trustee ustp.region15@usdoj.gov
- Alan Vanderhoff alan.vanderhoff@vanderhofflaw.com, alanvanderhoff@cox.net
- Victor A. Vilaplana vavilaplana@foley.com
- Marc J. Winthrop pj@winthropcouchot.com